IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.03.2023

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THE HONOURABLE MR. JUSTICE A.A.NAKKIRAN

C.M.A.No.2801 of 2019
and
CMP.No.14348 of 2019

National Insurance Co.Ltd.,
930, Sathiyamangalam Road
Gandhipuram
Coimbatore – 18. ... Appellant

..Vs..

Subramani (died)
1. Subbulakshmi
2. Ramesh
3. Mahendran
4. United India Insurance Co., Ltd.,
   Mettupalayam.
5.Subramani ... Respondents

Prayer: Civil Miscellaneous Appeal filed under Section 173 of the Motor Vehicles Act, 1988, to set aside the judgment and decree dated 04.08.2018 made in MCOP.No.1448 of 2014 on the file of the Motor Accidents Claims Tribunal (Special Sub Judge, Coimbatore).

For Appellant : Mr.S.Vadivel

For Respondents : No appearance for R3 & R4
No such addressee – R1, R2 & R5.

JUDGMENT

This appeal has been filed by the appellant/Insurance Company seeking to set aside the impugned award dated 04.08.2018 in M.C.O.P.No.1448 of 2014 passed by the Motor Accidents Claims Tribunal, (Special Sub Judge, Coimbatore).

2. The facts of the case briefly are as under:

On 25.06.2011 at about 8.00 p.m., near Pudukadu-Barliyar-Mettupalayam – Coonoor road bend when the deceased was travelling as a pillion rider in a motor cycle bearing Regn.No.TN-66-D-2365 towards Coimbatore, a driver of a lorry bearing Regn.No.TN-43-A-1711 came from the opposite direction and attempted to overtake another vehicle going ahead in the bend in a rash and negligent manner, dashed against the deceased and caused an accident. Due to the said impact, the deceased sustained fatal head injury. Immediately he was taken to Coonoor Government Hospital and there he was declared dead while on the road. In view of the same, the claimants seeks compensation of Rs.25,00,000/- before the Tribunal. After trial, the claimants were awarded a sum of

Rs.12,44,000/- as compensation, fixing contributory negligence on the appellant/Insurance Company and 3rd respondent in the ratio of 50% : 50% and thus directing the appellant/Insurance company to deposit a sum of Rs.6,22,000/- to the claimants as compensation. Being aggrieved over the aforesaid award, the appellant/Insurance Company has filed the present appeal seeking for exoneration of the Insurance Company from the liability.

3. The learned counsel for the appellant would submit that the Tribunal has failed to see that the claimants had not specifically attributed any negligence against the 4th respondent in the claim petition. It has erred in apportioning the negligence equally (50% : 50%) on the driver of the lorry and the rider of the motor cycle. The Tribunal ought to have taken the entire contents of the FIR while deciding the point of negligence as per the guidelines given in the decision of the Hon'ble Supreme Court reported in *2007 (2) TN MAC page 106 (SC) Oriental Insurance Co., Ltd. Vs. Premlata Shukla and others*. It has failed to see the cross examination of PW2/ eye witness in which it has been clearly stated that the driver of the lorry was negligent and has caused the accident. The reason assigned by the Tribunal

for apportioning the negligence are unsustainable either in law or on facts. Hence, the Insurance company ought to have exonerated from the liability in paying the compensation on behalf of the owner of the offending vehicle lorry. The appellant Insurance Company is not liable to pay compensation. It is further submitted that the Tribunal had given a finding contrary to the materials available on record. He further submitted that the Ex.P1/FIR and Ex.P7/charge sheet were against the driver of the lorry. In view of that the accident had occurred due to the rash and negligent driving of the offending vehicle lorry, the Tribunal has imposed the 50% liability on the appellant/Insurance Company to pay compensation to the claimants. However, 50% of the compensation amount being directed to pay to the claimants by the appellant/Insurance company is not sustainable and liable to be quashed.

4. Heard the learned counsel for the appellant and perused the entire documents produced before this Court.

5. During the trial, on the side of the claimants, two witnesses were examined as P.W.1 and P.W.2 and nine documents were marked as Ex.P.1 to Ex.P.9. On the side of the 4th respondent, R.W.1 was examined and Ex.R1 was marked.

6. On perusal of the award, it is seen that the Tribunal has fixed the liability in the ratio of 50% : 50% .The respondents 2 and 5 remained exparte before the Tribunal. There is no contra evidence on the side of the appellant and the fourth respondent. It is to be noted that the lorry was not insured with them at the time of accident that occurred on 25.06.2011. The insurance policy furnished by the petitioners pertains to the period from 24.06.2010 to 23.06.2011 but the accident occurred on 25.06.2011 subsequent to the policy period. The rider of the motor cycle in which the deceased was travelling as pillion rider had come out his path and hit against the lorry. In the event of both the parties are liable for the accident, the ratio of contributory negligence has to be fixed in accordance with the law.

7. After considering the aforesaid all aspects, the Tribunal has fixed the liability in the ratio of 50% :50% on the appellant /Insurance Company and the third respondent respectively and it has directed the appellant/Insurance company to pay the compensation to claimants a sum of Rs. 6,22,000/-

8. After considering the aforesaid facts and circumstances of the case and on perusal of the entire records, it is seen that as per the deposition of PW2, the deceased travelled as a pillion rider in the motor cycle rode by the 5^{th} respondent from Barliyar towards Coimbatore down hilling on ghat road and the lorry which was up hilling on the ghat road dashed against each other, this court is inclined to modify the ratio of liability as 60% : 40% fixing on the appellant/Insurance company and the third respondent respectively. In other words, the compensation awarded by the Tribunal is modified by changing the ratio on the negligence aspect in which 60% of the award amount shall be borne by the appellant/Insurance Company and the balance 40% of the award amount shall be borne by the third respondent. Other aspects of the award of the Tribunal shall remain the

same.

9. In the result,

(i) This Appeal is partly allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

(ii) The appellant / Insurance Company is hereby directed to pay the 60% of award amount which works out to Rs.7,46,400/- (Rupees Seven Lakhs Forty Six Thousand and Four Hundred only) together with interest @ 7.5% p.a. from the date of petition till the date of deposit, to the credit of M.C.O.P.No.1448 of 2014 on the file of the Motor Accident Claims Tribunal, (Special Sub Judge, Coimbatore) within a period of six weeks from the date of receipt of copy of the Judgment. On such deposit being made, the Tribunal is directed to transfer the award amount along with accrued interest to the bank account of the claimants through RTGS within a period of two weeks thereafter.

Index:Yes/No **16.03.2023**
Internet:Yes/No
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A.A.NAKKIRAN, J.

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To

1.The Section Officer
V.R.Section, High Court of Madras.

2. The Motor Accidents Claims Tribunal
Special Subordinate Judge-I Salem.

C.M.A.No.2801 of 2019
and
CMP.No.14348 of 2019

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